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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/852,285	05/10/2001	Martin Mueller	225/49902	3798

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WASHINGTON, DC 20044-4300

EXAMINER
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SMITH, JULIE KNECHT

ART UNIT	PAPER NUMBER
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3682

DATE MAILED: 01/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/852,285

Applicant(s)

MUELLER ET AL.

Examiner

Julie K Smith

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 17 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 14.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-11 and 13-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Muller (5,896,781) in view of Nawata et al. (EP 0788931).

Regarding claims 1-6, 8-11 and 13-15, Muller discloses a safety device for the support of a brake pedal in a motor vehicle, with a bracket (3) arranged in a wall area of a splash wall that is noticeably deformed into a passenger compartment in the event of a vehicle collision. Muller further discloses a pedal pivot shaft (4) of a pedal acting on a push rod (15) being mounted in the bracket support, wherein the pedal pivot shaft is mounted in the bracket support guide and fixed via a fixing (7), said fixing being neutralized in the event of a head on collision (see col. 3).

Muller does not disclose the support guide being elongated, having a forward position.

However, Nawata et al. teaches a support guide (42) having limits in each horizontal direction, and the pedal pivot shaft in normal operation being fixed in a forward position of the guide (see fig. 1).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the safety device of Muller with the teachings of Nawata et al. to

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provide an elongated hole to support the pedal pivot shaft to provide a guide for the pedal pivot shaft to travel along in the event of a collision so as to move the pedal out of the way of the driver's foot and prevent injury while keeping the pedal contained so that it does not interfere with the drivers feet.

Regarding claim 7, Muller discloses the rearward motion of the pedal pivot shaft in the guide being assisted by a spring (12) in the event of a collision.

Regarding claim 11, Muller discloses the claimed invention except for the bracket being made of plastic. It would have been obvious to one skilled in the art at the time the invention was made to make the support bracket out of plastic, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. (In re Leshin, 125 USPQ 416.).

Regarding claim 16, it should be noted that the applicant defines the product in terms of a process by which it is made and the process is nothing more than a permissible technique the applicant may use to define the invention since there is no structural difference is required.

3. Claim 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Muller in view of Nawata et al., as applied to claims 1-11 and 13-16 above, in view of Langeschei (DE 3401654). Muller discloses a safety device as claimed but does not disclose the pedal lever being designed as a double shell pedal. However, Langeschei teaches a pedal designed as a double shell pedal.

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Therefore, it would have been obvious to one skilled in the art at the time the invention was made to provide a double shell pedal lever so as to increase the torsional rigidity of the pedal.

***Response to Arguments***

4. Applicant's arguments with respect to claims 1-16 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julie K Smith whose telephone number is 703-305-3948. The examiner can normally be reached on Monday-Friday, 8-5:30, (Every other Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A Bucci can be reached on 703-308-3668. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9326.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

Jks

January 8, 2004

  
DAVID A. BUCCI  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600